

**REMARKS**

In order to emphasize the patentable distinctions of Applicant's invention over the prior art, claim 1, as well as claims 2 – 13 dependent thereon, have been amended to require that the survey means comprising the questionnaire be provided to selected candidates within different organizational levels of a building contractor's business for gathering answers concerning information detailing business and financial practices. Patentable distinctions of Applicant's invention over the prior art are further emphasized by Applicant's amendment to claims 1 – 13, requiring that the assessment means for determining the contractor's business and financial practices further comprise visiting several active job sites at which said contractor is involved as well as on-location assessment of candidates. These amendments to claims 1 – 13 are clearly supported by the original specification.

As amended, claim 1, as well as claims 2 – 13 dependent thereon, discloses a contractor certification system that comprises a survey means comprising a questionnaire provided to selected candidates within different organizational levels of a contractor's business. Selected candidates include workers, foremen, project managers, engineers, and principals so that the questionnaires are provided to representative segments of the building contractor's business. These workers, foremen, project managers, engineers, and principals provide multifaceted answers to the questions so that the questions optimally yield answers concerning information detailing the contractor's business and financial practices. Answers given by the selected candidates representing different organization levels within the business are gathered and used for assessing the contractor's business and financial practices by an independent third party.

Applicant's amended claims 1 – 13 further provide assessment of the financial practices which in turn is used to predicate risk ranking when securing lines of credit for the contractor's business. Mapping means for studying the answers provided to the questionnaire are utilized in selecting on-location job site visits and candidates for interviews. On-location assessment means comprise asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures. Additionally, assessment means further includes visitation of active job sites at which the contractor is involved. From the survey and on-location assessment means there is carried out a comparison means for assessing the contractor's business and financial practice. This provides a basis for ranking the contractor in comparison with industry standards. Additionally, applicants' claims 1 – 13 require reporting means for providing a grade indicative of the contractor's rank.

Surety risk predication based on operational and financial practices of building contractors is currently difficult to determine as building contractor's financial and operational practices are unique in that they are highly sensitive to changing conditions. The combination of features required by applicants' claims 1 – 13 provides a system that concisely determines a building contractor's business and financial practices in a manner so that financial institutions can rely on the information when providing lines of credit to a contractor. An objective evaluation of a contractor's risk value for surety and lending institutions is achieved through the combination of features required by applicant's present claims 1 – 13. Specifically, the approach of surveying candidates from different

organizational levels provides a multifaceted, accurate representation of the daily practices of the contractor's business.

The Examiner has repeated the previous rejection of claims 1 – 13 under 35 USC §103(a) as being unpatentable over US Patent No. 5,765,138 to Aycock et al. in view of GuruNet's "Business Evaluation Statements" (hereinafter, "GuruNet"), further in view of US Patent Application No. 2002/0099586 A1 to Bladen et al.

In repeating his previous rejection, the Examiner has stated that Aycock et al. teaches a contractor certification (supplier evaluation) system comprising survey means comprising a questionnaire (RFP/RFQ), which is provided to selected candidates (suppliers that desire to be qualified as vendors) within a contractor's business for gathering answers concerning information detailing business and financial practices (design, production, distribution, serviceability, and reliability of the supplier's product or service), said answers being used for assessing business (service and support) and financial practices (price and availability) of said contractor's practices by an independent third party (the purchasing agent identifying the set of technical requirements that need to be met may be a contracting department of the buying entity, or an independent agent acting on behalf of the buying entity). (Examiner cited Aycock et al., col. 1, lines 55 – 56; col. 6, lines 1 – 9). Applicant respectfully disagrees.

In addition, the Examiner has stated that the system in Aycock et al. teaches on-location assessment (on-site audit) means for determining (validating) business and financial practices at the contractor's operations, said assessment means comprising asking questions to each of said candidates selected through said mapping means (the RFP/RFQ questions are directed towards a set of technical requirements that need to be

met by prospective vendors and towards a set of selected quality maturity questions, thus the questions are based on a “mapping” of technical requirements; the questions are weighted corresponding to their relative sophistication or relevance to the project objective, thus the importance of the responses to the questions have been “mapped”) and observing examples of the contractor’s business practices and financial procedures (the on-site audit includes validating the supplier responses to the RFP/RFQ, either by performing actual tests on hardware equipment or software systems, and / or reviewing the quality control procedures and processes at the supplier site). (Examiner cited Aycock et al., col. 1, lines 45 – 49; col. 3, lines 24 – 29; col. 6, lines 19 – 54; col. 7, lines 62 – 65; col. 8, lines 27 – 31; col. 12, lines 47 – 50).

The Examiner has stated that the system in Aycock et al. teaches comparison means (risk assessment) for assessing business and financial practices (technical capabilities), ranking the contractor in comparison with industry standards. Specifically, the Examiner has stated that the supplier quality maturity assessment process is based upon national and international standards including ISO 9001/ISO 9000-3, which are industry standards for quality. Moreover, the Examiner has stated that reporting means (product database) for providing a grade indicative of said contractor’s rank (competitive analysis of all vendors to determine the respective performance) is taught by Aycock et al. (Examiner cited Aycock et al., col. 8, lines 58 – 63, col. 9, lines 59 – 67, and col. 10, lines 1 – 17).

The Examiner has stated that Aycock et al. teaches the use of a product database (which may include additional fields related to technical or fiscal parameters of products) and product price and availability. However, the Examiner has found that Aycock et al.

does not explicitly disclose assessment means for determining the financial practices of a contractor's operations or the use of financial practices to predicate risk when securing lines of credit. The Examiner has indicated that GuruNet is directed to the analogous art of providing survey means for evaluating the business and financial practices of a company. Accordingly, the Examiner has stated that Aycock et al. is directed towards evaluating the capabilities of potential vendors using on-site audits and questionnaires, while GuruNet is directed towards surveying staff to evaluate the capabilities of a company. Thus, the Examiner has found that both references are directed toward interactively evaluating the capabilities of a business; Aycock et al. being directed towards evaluating the business practices of potential contractors; and GuruNet being applied to any generic business so that an artisan of ordinary skill in the art would look to glean the evaluation methods of GuruNet and Bladen et al. to modify Aycock et al. to yield a more comprehensive means of evaluating the qualifications of potential contractors.

Furthermore, the Examiner has stated that the Applicant has admitted as prior art that it is "old and well known in the art that evaluations of a business can be used for a plurality of applications, such as establishing insurance premiums or loans of credit, and that the surety underwriting process involves the analysis of financial, credit and organizational capabilities of an organization, with substantial attention paid toward reviewing the contractor's business plan, history of operations, and evaluating management of the company, with emphasis on financial strength and past performance." Thus, the Examiner asserts that an artisan of ordinary skill in the art would take the

financial evaluations of a contractor, as provided by GuruNet, to obtain insurance premiums or establish lines of credit from surety institutions.

The Examiner stated that the combined teaching of Aycock et al. and GuruNet fail to teach a mapping means for studying answers provided to a questionnaire. However, the Examiner has indicated that Bladen et al. teaches a risk assessment system where performance can be compared against an industry benchmark using trend analysis graphs as results. The Examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aycock et al. to include a mapping means since it is quite advantageous for these graphs to be used to compare the overall performance of a contractor to industry standards or competitors, or to map their individual strengths and weaknesses.

Additionally, the Examiner has stated that Aycock et al. does not explicitly disclose the job title/role of organizations hierarchical position of survey recipients. However, Examiner has taken Official Notice that it is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses.

**Neither Aycock et al., GuruNet, nor Bladen, taken alone or in combination, teach all the claim limitations of Applicant's claims 1 – 13 and therefore the Examiner has failed to establish *prima facie* obviousness of Applicant's claimed invention.**

Applicant's response of June 29, 2006 submitted that Aycock et al. does not question or evaluate business and financial practices, but merely provides for selection of a supplier. However, the Examiner has stated that Aycock et al. teaches gathering answers concerning information detailing design, production, distribution, serviceability,

and reliability of the supplier's product or service and that same, along with price and availability information, are indicative of business and financial practices of the supplier.

Applicant's continue to respectively submit and further point out that the evaluation metrics of Aycock et al. are not indicative of business practices, but are merely indicative of a technical ability of a supplier to supply a given product and to therefore act as vendor for same. While the technical specifications set forth by the Examiner in regards to Aycock et al. may indicate the ability for a supplier to act as a vendor for a given project, the specifications do not involve the intricacies of a supplier's business, nor are such intricacies required for determining the ability of a supplier to act as a vendor. Aycock et al. teaches an apparatus and method for providing an interactive evaluation of suppliers used to analyze supplier capabilities in order to qualify a supplier as a vendor for a project. The system is a supplier self-evaluation system whereby vendor requirements are selected and assigned relative weight on the basis of project objectives and wherein supplier responses are assigned a scaled score on the basis of corresponding vendor responses so that a supplier maturity level is calculated. This supplier maturity level refers to the supplier's sophistication and capabilities in establishing and maintaining quality standards in the design, production, distribution, serviceability, and reliability of the supplier's product and service.

However, the supplier evaluation system disclosed by Aycock et al. does not question or evaluate business and financial practices within the supplier's business. The maturity requirements are established from a known set of quality process standards, such as ISO 9001 "Quality Systems – Model for Quality Assurance and Design, Production, Installation and Servicing", and the like (Col. 5, line 22 – 26). These standards are not

indicative of a contractor's risk value for surety and lending institutional purposes. Instead, these technical specifications are established in order to determine quality assurance, and basically evaluate the supplier as to the quality of the work, the price the work is offered at, and the availability. Price and availability are not tantamount to a contractor's business and financial practices and are not factors generally utilized by sureties and the like, but rather are utilized by other contractors and the like to determine whether the contractor should utilize a specific supplier.

Applicant submits that the information needed for securing lines of credit is different than that for securing a contract as a vendor. A supplier, as in Aycock et al. is fundamentally very different from a building or construction contractor. The entire construction process and running a construction company is vastly different from that of a vendor. Construction or building contractors are challenged with changing conditions, including elements that are unknown and must be dealt with that are outside the terms and conditions of a specific job or actual conditions known or specifications proposed. Aycock et al. deals exclusively with RFP & RFQ and products; products are the results of what raw materials are put together in the manufactured arena. When produced in the final and distributive form, there are no factors of change introduced by the weather, environment, and failure of performance by a subcontractor. Amended claims 1 – 13 recite that the financial practices are specifically used to predicate risk ranking in securing lines of credit for the contractor's business. As such, applicants' amended claims 1-13 require that the system yield financial intricacies of a contractor's business upon which a surety or lender can readily rely when determining loan qualifications.



Building contractor's financial and operational practices are unique from that of vendors and suppliers. Financial deterioration of a building contractor is frequently visible at the very late stages, so that measuring of such things as availability, design, production, and the like, which are very useful in determining supplier capabilities, are not enough to establish risk assessment of a contractor's financials. The Examiner has indicated that GuruNet teaches a set of assessment statements that can be used to evaluate the financial practices of a company. Applicants respectfully disagree, as GuruNet is basically a subjective, self assessment, set of statements rather than questions, which questions generally require a much more in depth answer as opposed to the statements, which require a 1 – 10 score in GuruNet. GuruNet does not establish financial information that can be utilized by a lender as a basis for support of critical financial lending decisions. Therefore, any combination of Aycock et al. and GuruNet would not yield in-depth financial practices of a contractor that could be relied upon by a lender in securing credit.

Applicant's response of June 29, 2006 submitted that Aycock et al. only provides for on-location assessment or tier 2 analyses if the supplier is not approved or if an automatic approval cannot be made. To which the Examiner has disagreed, stating that Aycock et al. teaches on-site auditing to validate supplier responses and gain additional information necessary to complete the supplier selection process. The Examiner has stated that Aycock et al. teaches on-location assessment means for validating business and financial practices at the contractor's operations via tier 2 analyses which is performed to gain additional information necessary to complete the selection process.

However, Applicant respectfully submits that Aycock et al. does not teach a method that utilizes on-location assessment upon compiling answers and correlating matches, discrepancies, and inadequate information, as is required via the mapping means of Applicant's claims 1 – 13. That is to say, in Aycock et al. on-location assessment is merely carried out when or if a supplier is not approved or automatic approval cannot otherwise be given – the on-location assessment is not carried out when or if the supplier is approved. Therefore, where the supplier's answers are incorrect, exaggerated, or otherwise misguided, and the supplier is approved, the on-location assessment is not performed to verify and otherwise confirm the answers. On the other hand, Applicant's amended claims 1 – 13 require that an on-location assessment be carried out, regardless of various factors, and further require that on-site assessment be carried out at active job sites of the builder. As such, Applicant's claims 1 – 13, as amended, provide a highly reliable system which essentially verifies the answers of each of the selected candidates to ensure that the final analysis and ranking is accurate and can be relied upon by lenders with confidence. Therefore, Applicant submits that Aycock et al. does not provide on-location and on active project site auditing in every case, but that Aycock et al. only calls for on-site assessment when a supplier cannot or is not automatically approved; as a result, the on-site assessment of Aycock et al. is not utilized to verify matched answers or discrepancies as is required by Applicant's amended claims 1 – 13.

The Examiner has stated that Aycock et al. does not explicitly disclose the job title / role or organizational hierarchical position of survey recipients. However, the Examiner has asserted that it has been admitted as prior art as a result of improperly and/

or untimely challenged Official Notice *that it is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority* needed to provide accurate responses.

While it may be known in the art to administer surveys to people with sufficient knowledge and authority, it is not known in the art to administer a given survey to **a full gamut of candidates throughout all levels of an organization** to determine financial and operational practices as is required by Applicant's claims 1 – 13. Specifically, Applicant's claims 1 – 13, as amended, require that the questionnaire be administered to workers, foremen, project managers, engineers, and principals so that a multifaceted survey is carried out.

It is respectfully submitted that, none of Aycock et al., GuruNet, and Bladen et al., taken alone, or in combination, discloses or suggests a contractor certification system utilizing a survey means comprising a questionnaire provided to selected candidates comprising workers, foremen, project managers, engineers, and principals, found within different organizational levels of a contractor's business. Applicant's present claims 1 – 13 require that the selected candidates comprise workers, foremen, project managers, engineers, and principals, thus resulting in a system wherein individuals at a plethora of different organizational levels of the contractor's business are questioned. Compiling the answers from these different candidates, as required by applicants' claims, provides a survey that examines virtually every level and aspect of the contractor's business and financial practices. Applicant's present claims 1 – 13 yields a certification system that derives a full gamut of expertise by questioning substantially all levels within the contractor's business. This multifaceted approach is not utilized by any system

constructed from any combination of the Aycock et al., GuruNet, and Bladen et al. disclosures.

Claims 2 – 13 have been rejected by the Examiner under 35 U.S. C. §103(a) as being unpatentable over Aycock et al. in view of GuruNet, and further in view of Bladen et al. Claims 2 - 13 depend from currently amended claim 1, which is submitted to be patentable for the reasons set forth hereinabove. Inasmuch as claims 2 – 13 contain all the limitations of independent amended claim 1, it is submitted that these dependent claims are also patentable over the combined teachings of Aycock et al., GuruNet and Bladen et al.

Accordingly, reconsideration of the rejection of claims 1 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. is respectfully requested.

### CONCLUSION

In view of the amendment to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration and allowance of claims 1 – 13, as amended, are earnestly solicited.

Respectfully submitted,  
David J. Alverson et al.



By \_\_\_\_\_  
Ernest D. Buff  
(Their Attorney)  
Reg. No. 25,833  
(908) 901-0220